IN THE SUPREME COURT OF THE STATE OF DELAWARE

GERALD A. WILMER.	§	
	§	No. 351, 2010
Defendant Below-	§	
Appellant,	§	
	§	Court Below─Superior Court
v.	§	of the State of Delaware
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. ID No. 9603002509
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: August 31, 2010
Decided: October 4, 2010

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

O R D E R

This 4th day of October 2010, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1)   The defendant-appellant, Gerald A. Wilmer, filed an appeal from the Superior Court's May 18, 2010 order adopting the May 3, 2010 report of the Superior Court Commissioner, which recommended that Wilmer's sixth motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied.[1] The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is

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[1] Del. Code Ann. tit. 10, §512(b); Super. Ct. Crim. R. 62.

manifest on the face of the opening brief that the appeal is without merit.[2]

We agree and affirm.

(2)   The record reflects that, in July 1997, a Superior Court jury found Wilmer guilty of Unlawful Sexual Intercourse in the First Degree. He was sentenced to 30 years of Level V incarceration, to be suspended after 25 years for decreasing levels of supervision. Wilmer's conviction was affirmed by this Court on direct appeal.[3] Wilmer subsequently filed five motions for postconviction relief, all of which were denied by the Superior Court. Two of those denials were appealed to this Court. We affirmed the Superior Court's judgment in both cases.[4]

(3)   In this appeal from the Superior Court's denial of his sixth postconviction motion, Wilmer claims that a) the State's re-indictment of the charge against him was improper; b) the Superior Court abused its discretion by permitting evidence of other bad acts; c) the prosecutor engaged in misconduct; d) his counsel provided ineffective assistance; and e) the Superior Court abused its discretion by denying his request for transcripts at State expense.

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[2] Supr. Ct. R. 25(a).
[3] *Wilmer v. State*, Del. Supr., No. 404, 1997, Walsh, J. (Mar. 6, 1998).
[4] *Wilmer v. State*, Del. Supr., No. 187, 2003, Holland, J. ((July 3, 2003); *Wilmer v. State*, Del. Supr., No. 411, 2006, Holland, J. (Sept. 26, 2006).

(4)   This Court has ruled that, prior to considering the merits of claims asserted in postconviction proceedings, the Superior Court must first determine whether the procedural requirements of Rule 61 have been met.[5] In this case, the record reflects that Wilmer's conviction became final in 1998, when this Court's mandate was issued.[6]   However, Wilmer's sixth postconviction motion was not filed until 2010---well beyond the 3-year limitation provided in Rule 61(i)(1).[7]   In addition, Wilmer's first four claims are all procedurally barred either because they were not asserted in a previous postconviction motion under Rule 61(i)(2) or because they were formerly adjudicated in a previous postconviction motion under Rule 61(i)(4).   There is, moreover, no evidence of a miscarriage of justice under Rule 61(i)(5).   Under these circumstances, we find no error or abuse of discretion on the part of the Superior Court in denying Wilmer's request for transcripts at State expense.   We conclude, therefore, that the Superior Court's denial of Wilmer's postconviction motion must be affirmed.

(5)   It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by

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[5] *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).
[6] Super. Ct. Crim. R. 61(m)(2).
[7] The 3-year limitation has since been reduced to 1 year.

settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

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BY THE COURT:

/s/ Jack B. Jacobs
Justice

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